THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

+ Writ Petition No.9146 of 2007

% Dated 31.07.2007

P.V.Ramana Rao.

....Petitioner

$ Govt. of A.P. and others.

....Respondents

! Counsel for the petitioner : Sri K.Venkatesh
^ Counsel for respondents : G.P. for Revenue

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? Cases referred:

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Between:

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HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 9146 of 2007

O R D E R:

Petitioner is an Advocate and holds a certificate to practice as

'notary'. During the course of his activity, he notarised two documents. The first is an affidavit dated 22.12.2005, through which one Sri K.Ananda Ram had declared and affirmed the ownership of his property, in the context of obtaining a loan from M/s.Vijaya Bank. The second is an affidavit, dated 17.01.2006, sworn to by one Sri Jasti Padma Veera Kumar authorizing his son, by name Jasti Dharma Rao to receive compensation for the land acquired from him.

The District Registrar, Stamps and Registration, Rajahmundry, East Godavari, 3rd respondent herein prepared notes of inspection of notarial records of the petitioner, dated 23.12.2006. It was pointed out that the documents, referred to above, have not been stamped properly and there is a deficit of Rs.12,030/- for both the documents. On receipt of the same, the petitioner submitted objections on 07.02.2007 stating, *inter alia,* that the loan transaction was already covered by a separate memorandum, on which a sum of Rs.500/- was paid towards stamp duty and that the affidavit authorizing the father of an individual does not require any stamp duty.

The 3rd respondent appears to have forwarded this correspondence to the Commissioner and Inspector General of Registration, 2nd respondent herein. On the directions of the latter, the 3rd respondent required the petitioner to pay the deficit stamp duty, through notice, dated 23.03.2007. The same is challenged in this writ petition.

Learned counsel for the petitioner submits that the notice issued by 3rd respondent is virtually an order of assessment and it does not refer to any provision of law. He contends that the fact, that the transaction of loan evidenced by an affidavit had already suffered stamp duty, was not taken into account and that the 3rd respondent had acted solely on the directions issued by the 2nd respondent, without application of mind.

Learned Government Pleader for Revenue produced the relevant records and submits that the documents, in question, were properly verified and it is competent for the respondents to levy the deficit stamp duty from the petitioner.

Having been appointed as a 'notary' under Section 4 of the Notaries Act, 1952 (for short 'the Act'), the petitioner had notarized the two documents, referred to above. The functions of a notary are mentioned in Section 8 of the Act, which reads as under:

> ***8. Functions of notaries:***- *(1) A notary may do all or any of the following acts by virtue of his office; namely:-*
>
> *(a) verify, authenticate, certify or attest the execution of any instrument;*
>
> *(b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security;*
>
> *(c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (XXVI of 1881), or serve notice of such note or protest;*
>
> *(d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;*
>
> *(e) administer oath to, or take affidavit from, any person;*
>
> *(f) prepare bottomry and respondentia bonds, charter parties and other mercantile documents;*
>
> *(g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is entitled to operate;*
>
> *(h) translate, and verify the translation of, any document from, one language into another;*
>
> *[(ha) act as a Commissioner to record evidence in any civil or criminal trial if so directed by any court or authority;*
>
> *(hb) act as an arbitrator, mediator or conciliator, if so required]*
>
> *(i) any other act which may be prescribed.*
>
> *(2) No act specified in sub-section (1) shall be deemed to be a notarial act except when it is done by a notary under his signature and official seal.*

Rule 10 of the Notaries Rules stipulates the fee that can be levied by a notary, to notarise a document. Rule 11 indicates the manner, in which the notary must conduct the transaction of business. In none of these provisions, a notary is placed under obligation to ensure collection of the proper stamp duty. It is for the parties to the document to pay the required

amount of stamp duty or to face the consequences, provided for under the Indian Stamp Act and the Rules made thereunder. Even under the scheme of the Indian Stamp Act, no person, who is not a party to a document, can be proceeded, for levy of the deficit stamp duty or penalty.

After conducting inspection of the registers of notary maintained by the petitioner, the third respondent appears to have forwarded the note prepared by him, to the second respondent. The latter, in turn, issued a memo, dated 18.01.2007, which reads as under:

> *"The attention of the District Registrar, Rajahmundry is invited to the reference cited. He is requested to collect the Deficit Stamp Duty of Rs.12,030/- from the parties through Notary and submit his report immediately."*

On receipt of this, the 3rd respondent addressed a letter to the 2nd respondent, enclosing the copies of the documents, for perusal and necessary orders. Thereafter, the 2nd respondent directed the 3rd respondent to collect deficit stamp duty from the petitioner. It is in this context that the 3rd respondent issued the impugned notice, dated 23.03.2007, to the petitioner, requiring him to pay the deficit stamp duty and submit a copy of the challan, through which he paid, for onward transmission to the 2nd respondent.

The whole episode demonstrates lack of basic understanding of the provisions of the Indian Stamp Act and the Notaries Act on the part of respondents 2 and 3. One heads the organization at the State level and the other at the District level. Their only object and aim appears to be to collect as much amount as possible from anyone, whom they come across, irrespective of the obligation of the individual under any provision of law. A Department, which was constituted with an object of providing evidence for important transactions, by registering the documents, has unfortunately transformed itself into the one to collect as much money as possible, that too, in utter violation of the provisions of law. A stage has

reached, where the citizens are scared of presenting the documents or even of writing any document and to keep it with themselves.

It appears that apart from the documents that are presented for registration, the authorities under the Indian Stamp Act and the Registration Act are in desperate search of transactions, in their hunt for money. The procedure prescribed under the Indian Stamp Act is given a go bye. It may be true that they are also under pressure, but that hardly constitutes any justification to trample upon the rights of the citizens. In their desperate attempt, they did not even spare a notary, who is conferred with very important functions under the Central enactment. This Court takes serious exception to the manner, in which respondents 2 and 3 have conducted themselves, ignoring all the basic principles of law, and have driven the petitioner to this Court. The arbitrariness on the part of respondents 2 and 3 is also demonstrated from the fact that they did not even care to take into account, the objection submitted by the petitioner. The fact that the transactions, referred to in an affidavit, have already suffered stamp duty of Rs.500/- was not even adverted to.

Hence, the writ petition is allowed and it is also warned that in case, similar instances come to the notice of this Court, the feasibility of declaring the officer concerned as unfit to hold the post would be considered. There shall be no order as to costs.

31.07.2007

Note: L.R.Copy to be marked.

(B/o)

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